

ARTICLE 14.

Metropolitan Districts

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Metropolitan Districts

Sec. 14.1. Legislative declaration.

- (a) Special districts (“Districts”) organized under Title 32, Article 1, C.R.S. (the “Special District Act”), under appropriate circumstances, provide an economic alternative to the development of municipal infrastructure at the expense and risk of the Town. The Town has previously authorized Districts within its corporate limits for the sole purpose of development of infrastructure to serve their respective service areas. In the past, the Town has restricted the authority and autonomy of the Districts through its approving resolutions and intergovernmental agreements.
- (b) The intent of this Article is to impose conditions, restrictions and requirements on the development by existing Districts of additional capital infrastructure and the issuance of indebtedness, in order to preserve the financial integrity of the Town and the health, safety, prosperity, security and general welfare of all of the residents and citizens of the Town. The Special District Act and the existing intergovernmental agreements between the Town and the Districts in certain respects do not adequately address the local concerns and interests of the Town in regulating the Districts’ development of capital facilities and incurrence of debt to finance such development, both of which ultimately have a direct financial consequence to the Town. It is necessary and advisable to specify the events and conditions which, under the Special District Act; likely constitute material modifications to an approved District service plan, in the context of the particular business and legal relationship between the Town and Districts. The provisions of this Article are also intended to provide procedures for the processing and review of proposals for formation of new Districts, and to define the restrictions and limitations which may be imposed by the Town as a condition to the approval of such Districts consistent with the policy and intent of this Article.
- (c) The adoption of this Article is necessary, requisite and proper for the government and administration of local and municipal matters under the Town’s powers granted by Title 31 and Title 32, Article 1, C.R.S. The Town Board specifically finds that the determination of whether to use Districts to provide for the development of capital facilities and incurring of debt to finance such facilities is purely a matter of local concern for the Town to make. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.2. Definitions.

As used in this Article, the following terms, phrases and words shall have the following meanings:

Board means the Board of Directors of a District.

District means a special district organized under the Special District Act whose service plan is to be approved by the Town under applicable state law and any existing District that is located wholly within the corporate limits of the Town as of the effective date of this Article.

Model Service Plan means the model service plans for single and/or multiple Districts that may be approved by the Town Board from time to time.

Petitioners means those persons proposing a service plan or an amendment to an approved service plan. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.3. Reservation and construction.

The Town reserves all the powers and authority granted to municipalities by the Special District Act. The provisions of this Article shall be construed and applied to supplement the applicable provisions of the Special District Act.

(a) Required annual report.

Not later than September 1 of each calendar year, each District shall file an annual report (the “annual report”) with the Town Clerk. The annual report shall reflect activity and financial events of the District through the preceding December 31 (the “report year”). The annual report shall include the following:

- (1) A narrative summary of the progress of the District in implementing its service plan for the report year;
- (2) Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operations (i.e., revenues and expenditures) for the report year. If exempt from audit, the District shall provide a copy of the Request for Exemption and the approval for the exemption;
- (3) Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the report year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the report year;
- (4) Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year and the current mill levy of the District pledged to debt retirement in the report year;
- (5) The District’s budget for the calendar year in which the annual report is submitted;
- (6) A summary of residential and commercial development in the District for the report year;
- (7) A summary of all fees, charges, taxes and assessments imposed by the District as of January 1 of the report year;
- (8) Certification of the Board that no action, event or condition enumerated in Section 14.4 (**Material Modification** below) has occurred in the report year; and
- (9) The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board.

(b) Review of annual report.

Annually, on a date established by resolution of the Town Board, the Town Board at a regular public meeting may review the annual reports received from each District. In the event the annual report is not timely received by the Town Clerk, notice of such default shall be given by certified mail by the Town Clerk to the Board of such District, at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the Town Clerk shall empower the Town Board to impose the sanctions authorized in Section 14.20 (**Sanctions**, below). The remedies provided for noncompliance with the filing of the annual report shall be supplementary to any remedy authorized by the Special District Act. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.4. Material modification.

The occurrence of any of the following actions, events or conditions, subsequent to the date of approval of the service plan or most recent amendment thereto, shall constitute material modifications requiring a service plan amendment:

- (a) Default in the payment of principal or interest of any District bonds, notes, certificates, debentures, contracts or other evidences of indebtedness or borrowing issued or incurred by the District which:
 - (1) Persists for a period of one hundred twenty (120) days or more;
 - (2) The defaulted payment aggregates either fifty thousand dollars (\$50,000.00) or ten percent (10%) of the outstanding principal balance of the indebtedness, whichever is less; and
 - (3) The creditors have not agreed in writing with the District to forbear from pursuit of legal remedies.
- (b) The failure of the District to develop, cause to be developed or consent to the development by others of any capital facility proposed in its service plan when necessary to service approved development within the District.
- (c) Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances) projected in the financial portion of the service plan during the three-year period ending with the report year, where development revenue is defined as fees, exactions and charges imposed by the District on residential and commercial development, excluding taxes, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000.00).
- (d) The development of any capital facility in excess of one hundred thousand dollars (\$100,000.00) in cost, which is not either identified in the service plan or authorized by the Town in the course of a separate development approval, excluding bona fide cost projection miscalculations; and state or federally mandated improvements, particularly water or sanitation facilities.
- (e) The occurrence of any event or condition which is defined under the service plan or intergovernmental agreement as necessitating a service plan amendment.
- (f) The material default by the District under any intergovernmental agreement with the Town.

- (g) Any of the events or conditions enumerated in Section 32-1-207(2), C.R.S., as amended.
(Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.5. Determination of applicability.

Should the District dispute that one (1) or more of the occurrences enumerated in Section 14.4 (**Material Modification**, above) is a material modification, the District may request a hearing before the Town Board after consultation with Town staff. After hearing and receipt of any relevant information presented by the District and the recommendation of Town staff, the Town Board shall make a finding as to whether such occurrence constitutes a material modification. In the event it is found a material modification has taken place, the District shall submit its request for an amendment in accordance with this Article, unless waived by the Town Board. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment. The Town Board may, however, require a later amendment if the change or deviation, on a cumulative basis, subsequently becomes material. In making its determination, the Town Board shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the Town. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.6. Service plan amendment.

- (a) Except as otherwise provided in the approved service plan and except when the Town Board has determined that no material modification has occurred pursuant to Section 14.4 (**Material Modification**, above), within ninety (90) days of the occurrence of an action, event or condition enumerated in Section 14.4 (**Material Modification**, above), the Board shall forward an appropriate petition to the Town Board for approval requesting a service plan amendment. The petition for amendment shall include:
- (1) Any information or documentation required under the applicable provisions of the Special District Act;
 - (2) Any material changes since the service plan was last reviewed and approved by the Town Board to any of the information, assumptions or projections furnished in conjunction with the petition for approval of organization of a District or contained in the service plan;
 - (3) A detailed explanation of the activity, events or conditions which resulted in the material modification, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition;
 - (4) The impact of the material modification on the District's ability to develop the capital facilities and infrastructure necessary to meet its capital development plan;
 - (5) The effect of the material modification on the District's ability to retire as scheduled its outstanding financial obligations and its ability to issue and market additional indebtedness, if any;
 - (6) A current financial plan for the District reflecting development absorption rates anticipated within the District's service area, projected annual revenues and expenditures based upon such projected absorption rates, debt issuance and amortization schedules and a projection of anticipated capital outlays;

- (7) The financial impact of the modification on existing residents of the District;
 - (8) An updated five-year capital improvements plan; and
 - (9) What alternatives or options are available to the District if the requested amendment is not approved.
- (b) All of the required information shall be supported by appropriate technical analysis, reports and supporting documents of qualified professionals and consultants. The amendment shall be processed and reviewed in the same manner as prescribed by this Article for an initial service plan, except that the submittal requirements of this Section shall be substituted for those of Section 14.13 (**Filing a Proposed Service Plan**, below), and the application fee shall be two hundred fifty dollars (\$250.00). This Section shall not impair the right of the Town to bring an action in the district court to enjoin the activities of the District pursuant to Section 32-1-207(3)(b), C.R.S., as amended. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.7. Partial exemption.

If any District has not undertaken development of capital facilities or issued any indebtedness, it may apply to the Town Board for an exemption from compliance with this Article for a period of time not to exceed two (2) years. The Town Board may grant an exemption if the Board submits a resolution to the Town Board stating that upon issuance of the exemption, the District's authorization under the service plan and the intergovernmental agreement with the Town to undertake development of capital facilities or issue any indebtedness is temporarily suspended. With issuance of the partial exemption, the District shall be exempted from compliance with this Article, except that the District annually, not later than September 1, shall submit financial statements from the previous year and the budget for the current year. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.8. Required service plan amendments.

After the effective date of this Article all service plan amendments and amendments to statement of purpose shall comply with this Article. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.9. Review of financing.

A District shall not issue any indebtedness that is not substantially consistent with the service plan previously approved by the Town. Prior to the issuance of any indebtedness, the District shall submit the proposed financing to the Town for review and comment. The submission shall include the dollar amount of the issue, the estimated interest rate and other financing costs, the type of revenues pledged to repayment, including amount of the mill levy pledged, and a description of the credit enhancements, together with any preliminary official statement or other prospectus for the debt issue. The submission shall be accompanied by a certification of the Board that the proposed issuance or refinance of indebtedness is authorized by and in compliance with the service plan for the District. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.10. Mill levy cap.

Unless approved by the Town Board, the service plan of any district shall impose a Mill Levy Cap such that the total mill levy of the district shall not exceed fifty (50) mills. In the event of changes in the ratio of actual valuation to assessed valuation for real property, pursuant to Article X, section 3(1)(b) of the

Colorado Constitution and legislation implementing such constitutional provision, the fifty (50) mill levy limitation provided herein will be increased or decreased (as to all taxable property in the District) to reflect such changes so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes ("Gallagher adjustment"). The mill levy cap shall be an enforceable limit on all District mill levies.

Without increasing the Mill Levy Cap, the District shall impose a mill levy of three (3) mills for purposes of financing capital improvements or for financing operations and maintenance expenses associated with Town capital improvements, as determined by the Town, which revenues shall be remitted to the Town upon the District's receipt. The revenues received by the Town for capital improvements or operation and maintenance expenses may be applied to any Town capital improvement so long as the capital improvement is one that the District could otherwise finance (i.e. streets, traffic safety controls, street lighting, water, landscaping, sanitary sewer, storm drainage, mosquito control and park and recreation improvements). The three (3) mills imposed for these purposes shall be included in the fifty (50) mill levy cap. The District's imposition of the three (3) mills for the capital improvements or operation and maintenance of the Town capital improvements shall be memorialized in an intergovernmental agreement after the District's organization and the District's failure to levy, collect, and pay over to the Town the three (3) mills shall constitute a material modification of this Service Plan. In the event that the District has no debt service mill levy, the District shall have no obligation to levy, collect and pay over to the Town the three (3) mills set forth herein. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.11. Service plan consideration.

Sections 14.12 (**Pre-submittal Meeting**, below) through 14.17 (**Written Determination**, below) shall govern the processing, review and consideration of service plans for new Districts, or service plan amendments for existing Districts. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.12. Presubmittal meeting.

Petitioners shall initiate a service plan proposal by meeting with a designated Town staff representative to discuss the procedures and requirements for a service plan. The Town representative shall explain the administrative process, and provide information to assist petitioners in the orderly processing of the proposed service plan. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.13. Filing of proposed service plan.

- (a) Petitioners shall file a proposed service plan and fifteen (15) additional copies with the Town Clerk. The proposed service plan shall substantially comply with the format of any model service plan, if any, adopted by the Town Board.
- (b) The application and processing fee for a service plan shall include a two thousand-five hundred dollar (\$2,500.00) deposit, and a seven hundred fifty dollar (\$750.00) fee, provided that, if the Town Board determines that special review of the service plan or amendment is required, the Town Board may impose an additional fee to reimburse the Town for reasonable direct costs related to such special review. The Town Administrator may waive all or any portion of the application and processing fee for smaller Districts initiated by the Town's existing residents or businesses. The Town will reimburse any portion of the application and processing fee that is not expended by the Town.
- (c) A copy of the proposed petition to be filed with the district court must be included with the proposed service plan filed with the Town.

- (d) If a District is desired, the proposed service plan shall be filed on any proposed district at the same time as the petition for annexation. If the proposed territory is already annexed to the Town and a District is desired, then the proposed service plan shall be filed concurrently with the zoning application and/or sketch plan/preliminary plat. Exceptions to this provision shall be in the sole discretion of the Town Board, after a recommendation from the Town Administrator as to the proposed District's fitness and public purpose.
- (e) Service plan contents.

The proposed service plan shall include the following:

- (1) The information required under Section 32-1-202(2), C.R.S.
- (2) A map of the proposed District boundaries with a legal description, or lot and block description.
- (3) An itemization of any costs which petitioners expect to be assumed by the Town for the construction of public improvements.
- (4) Proof of ownership for all properties within the District or proof of ownership of the property owned by the petitioners within the District.
- (5) A copy of any and all proposed, contractual and/or operations documents which would affect or be executed by the proposed District, including the form of the intergovernmental agreement between the District and the Town.
- (6) A capital plan including the following:
 - a. A description of the type of capital facilities to be developed by the District;
 - b. A description of additional amenities that would enhance the value and quality of life for the stakeholders of the district (i.e. pools, clubhouses, recreation facilities, within the district).
 - c. An estimate of the cost of the proposed facilities; and
 - d. A pro forma capital expenditure plan correlating expenditures with development.
- (7) A financial plan including the following:
 - a. The total amount of debt issuance planned for the five-year period commencing with the formation of the District;
 - b. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based, for at least a ten-year period from the date of the District formation;
 - c. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts, and any expenses related to the organization and initial operation of the District;

- d. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources;
 - e. The amount of any reserve fund and the expected level of annual debt service coverage which will be maintained for any financing;
 - f. The total authorized debt for the District;
 - g. The provisions regarding credit enhancement, if any, for the proposed financing, including, but not limited to, letters of credit and insurance; and
 - h. A list and written explanation of potential risks of the financing.
- (8) Such other information contained in the model service plan or as may reasonably be deemed necessary or appropriate by the Town. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.14. Administrative review.

The Town shall have ninety (90) days from the date the service plan is filed to complete its preliminary review. Once a review has been completed, a comprehensive analysis shall be made in written report form to the Town Board. The report shall evaluate the service plan and incorporate comments of the Town staff as well as any consultants. The report shall set forth the recommendations made in accordance with the review criteria contained in Section 14.16 (**Hearing and Determination**, below). (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.15. Public hearing.

Upon completion of the administrative report, the Town shall schedule a public hearing at a regular Town Board meeting. Public notice shall be accomplished in accordance with the requirements of Section 32-1-204(1) and (1.5), C.R.S., as amended. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.16. Hearing and determination.

- (a) The hearing held by the Town Board shall be open to the public. Any testimony or evidence which, in the discretion of the Town Board, is relevant to the organization of the District shall be considered.
- (b) After consideration of the service plan, reports and any evidence and testimony accepted or taken at the public hearing, the Town Board shall approve without condition, approve with condition or disapprove the proposed service plan or amendment, applying the following criteria:
 - (1) Whether there is a sufficient existing and projected need for organized service in the area to be serviced by the proposed District;
 - (2) Whether the existing service in the area to be served by the proposed District is inadequate for present and projected needs;
 - (3) Whether the proposed District is capable of providing economical and sufficient service to the area within its proposed boundaries;

- (4) Whether the area to be included in the proposed District has or will have the financial ability to discharge the proposed indebtedness on a reasonable basis;
- (5) Whether adequate service is not or will not be available to the area through the Town or other existing quasi-municipal corporations, including existing Districts, within a reasonable time and on a comparable basis;
- (6) Whether the facility and service standards of the proposed District are compatible with the facility and service standards of the Town;
- (7) Whether the proposal is in substantial compliance with the Town's Comprehensive Plan;
- (8) Whether the proposal is in substantial compliance with the county, regional or state long-range water quality management plans for the area;
- (9) Whether the creation of the District will be in the best interests of the area proposed to be served;
- (10) Whether the creation of the District will be in the best interests of the residents or future residents of the area proposed to be served;
- (11) Whether the proposed service plan is in substantial compliance with this Article; and
- (12) Whether the creation of the District will foster urban development that is remote from or incapable of being integrated with existing urban areas, or place a burden on the Town or adjacent jurisdictions to provide urban services to residents of the proposed District. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.17. Written determination.

Within twenty (20) days after the public hearing, the Town Board shall adopt a resolution regarding the proposed service plan or amendment. If the service plan is approved, a resolution of approval shall be adopted. If the service plan is disapproved, a resolution for such disapproval shall be adopted, including the reason(s) for such disapproval. If the service plan is conditionally approved, the amendments to be made in, or additional information relating to, the service plan, together with the reasons for such amendments or additional information, shall be set forth in writing, and the hearing shall be continued until such amendments or additional information are incorporated in the service plan. Upon the incorporation of such amendments or additional information in the proposed service plan, the Town Board shall adopt a resolution of approval. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.18. Appeal.

The Town Board resolution shall document the Town Board's final determination for the purpose of any appeal to the district court. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.19. Capital facilities.

Districts are prohibited from developing or constructing any capital facility unless such facility is

authorized under the service plan and intergovernmental agreement, and any applicable Town ordinances. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.20. Sanctions.

Should any District fail to comply with any applicable provision of this Article or the Special District Act, the Town Board by resolution may impose one (1) or more of the following sanctions, as it deems appropriate:

- (a) Exercise any applicable remedy under the Special District Act;
- (b) Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development of public facilities or construction;
- (c) Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
- (d) Exercise any other legal remedy, including seeking injunctive relief against the District, to ensure compliance with the provisions of this Article. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.21. Disclosure to buyers of property within the district.

Because purchasers of property within the district will be subject to additional property tax millage, the Petitioner or any successor homebuilder shall provide a statement disclosing the amount of additional property tax millage, along with an annual amount of additional tax (in dollars) required to fund and operate the district shall be disclosed to said purchasers for the applicable property. This disclosure shall be made to all prospective purchasers at the time a contract for sale is executed along with the amount of additional tax, and shall also be disclosed to the purchaser at the time of settlement. The disclosure shall be included as a completely separate page of the contract. The District shall also record a statement against the property within the District, at such time as the property is legally included therein, including notice of the existence of the District, average expected tax levy, maximum expected tax levy and maximum allowed tax levy. The form of notice shall be substantially similar to the form attached. (Ord. 791, 2005; Ord. 846, 2006)

Sec. 14.22. Application to pending service plans and amendments.

This Article shall govern the processing, review and consideration of service plans for new Districts, or those existing Districts, required to submit service plans or service plan amendments which have not received approval prior to the effective date of this Article. (Ord. 791, 2005; Ord. 846, 2006)